

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**N.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Detroit, MI, Employer**

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**Docket No. 16-0573  
Issued: May 17, 2016**

*Appearances:*  
*Steven Burt, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 2, 2016 appellant, through her representative, filed a timely appeal from a January 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has established impairment warranting a schedule award.

**FACTUAL HISTORY**

On November 15, 2004 appellant, then a 53-year-old letter carrier filed an occupational disease claim, Form CA-2, alleging that she developed bilateral heel pain while in the performance of duty. She became aware of her condition on September 10, 2004 and subsequently related it to her employment. OWCP accepted appellant's claim for exacerbation

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

of bilateral retrocalcaneal bursitis and exacerbation of gait disturbance. Appellant did not stop work.

Appellant came under the treatment of Dr. Louis J. Geller, a podiatrist, from October 25, 2004 to June 10, 2005, for bilateral retrocalcaneal bursitis which had been symptomatic for two years. X-rays of both feet revealed posterior calcaneal spur formations and he treated appellant with a series of cortisone injections in both heels and physical therapy. Dr. Geller opined that appellant's conditions were exacerbated by her job as a postal worker. In reports dated March 31 to January 30, 2007, he noted that appellant continued to have posterior left heel pain and retrocalcaneal bursitis and could not walk up steps. Dr. Geller recommended physical therapy. In a duty status reports dated January 19, 2005 to January 29, 2008, he diagnosed retrocalcaneal bursitis of the left foot and released appellant to work with restrictions.

On February 22, 2006 and February 25, 2008 OWCP offered appellant a light-duty position as a modified city carrier. Appellant accepted the position and returned to work.

On March 31, 2014 appellant filed a claim for a schedule award. On April 22, 2014 she again filed a Form CA-7 claim for a schedule award.

On May 9, 2014 OWCP requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> No further response was received.

On August 13, 2014 OWCP denied appellant's claim for a schedule award. The decision was returned by the U.S. Postal Service, however, as undeliverable.

In a November 19, 2014, letter to appellant, OWCP noted developing and denying her request for a schedule award. However, the previous claims examiner overlooked her address change and the decision was again returned as undeliverable. Due to the oversight OWCP again requested that appellant submit a detailed report from her treating physician which provided an impairment evaluation pursuant to the A.M.A., *Guides*. This request was sent to the address of record. It specifically requested an opinion as to whether she had reached maximum medical improvement, a diagnosis upon which the impairment was based, and a detailed description of objective findings including decreased strength, atrophy, ankyloses, sensory changes and subjective complaints such as pain or discomfort and a detailed description of any permanent impairment under the applicable criteria and tables in the A.M.A., *Guides*.

Appellant submitted a December 18, 2014 report from Dr. Geller who had seen appellant for an impairment rating. Dr. Geller diagnosed bilateral foot pain, hallux rigidus of the right foot, capsulitis of the first metatarsophalangeal joint of the right foot and retrocalcaneal bursitis of the bilateral feet. Gait examination revealed a limp on the right and left lower extremity, osseous hypertrophy of the dorsal aspect of the metatarsophalangeal joint of the right foot, positive pop on metatarsophalangeal joint of the right foot, pain with attempted active/passive first metatarsophalangeal joint dorsiflexion and plantar flexion of the right foot, the

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

metatarsophalangeal joint dorsiflexion of the right foot was two degrees, erythema/edema was present at the dorsal aspect of the first metatarsophalangeal joint of the right foot, limited range of motion and weakness bilaterally of the feet and ankle due to the work-related injuries. Dr. Geller noted treating appellant since 2005 for bilateral heel and foot pain. He indicated that surgery, physical therapy, injections, custom orthotics, and other conservative care was provided without improvement in appellant's condition. Dr. Geller noted that appellant reached maximum medical improvement. However, he did not reference any impairment values.

On February 18, 2015 OWCP denied appellant's claim for a schedule award as the evidence was insufficient to establish permanent impairment to a scheduled member due to the accepted work injury.

On February 24, 2015 appellant requested an oral hearing which was held before an OWCP hearing representative on October 16, 2015. At the hearing, appellant's representative contended that appellant's physician was not familiar with the A.M.A., *Guides*, and that OWCP should have further developed the medical evidence. The hearing representative informed the representative of the need to submit medical evidence supporting that appellant had permanent impairment.

In a decision dated January 4, 2016, OWCP denied appellant's claim for a schedule award.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*<sup>5</sup> has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup>

Not all medical conditions accepted by OWCP result in permanent impairment to a scheduled member.<sup>7</sup> The Board notes that, before applying the A.M.A., *Guides*, OWCP must determine whether the claimed impairment of a scheduled member is causally related to the

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<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>6</sup> See 20 C.F.R. § 10.404.

<sup>7</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006).

accepted work injury.<sup>8</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>9</sup>

### ANALYSIS

Appellant alleges permanent impairment of her feet due to the accepted conditions. For a schedule award, she must establish permanent impairment of a listed member of the body due to an employment injury.<sup>10</sup> Appellant's condition was accepted for exacerbation of bilateral retrocalcaneal bursitis and exacerbation of gait disturbance. On November 19, 2014 OWCP requested that she submit a medical opinion from her treating physician addressing her degree of permanent impairment under the A.M.A., *Guides*.

However, the Board finds that appellant failed to submit sufficient medical evidence to establish permanent impairment due to her accepted conditions. She submitted a December 18, 2014 report from Dr. Geller who diagnosed various medical conditions following an examination. Dr. Geller noted that appellant had reached maximum medical improvement. However, the report from him failed to include an impairment rating or provide an adequate description of her physical condition so that an impairment rating could be determined by an OWCP medical adviser. For instance, Dr. Geller in his report dated December 18, 2014, noted pain with attempted active/passive of the first metatarsophalangeal joint dorsiflexion and plantar flexion of the right foot, the metatarsophalangeal joint dorsiflexion of the right foot was two degrees, limited range of motion and weakness to the bilateral feet and ankle. However, he failed to explicitly define impairment in terms of the A.M.A., *Guides*, i.e., whether it was based on findings of pain, loss of range of motion or loss of strength.<sup>11</sup>

In order to meet her burden of proof appellant's physician must provide a sufficiently detailed description of her condition so that the claims examiner and others reviewing the file would be able to clearly visualize the impairment with its resulting restrictions and limitations.<sup>12</sup> As Dr. Geller did not adequately describe appellant's condition or correlate his findings with the A.M.A., *Guides*, his report is insufficient to establish the extent of appellant's permanent

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<sup>8</sup> *Michael S. Mina*, 57 ECAB 379, 385 (2006).

<sup>9</sup> *Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

<sup>10</sup> *Id.*

<sup>11</sup> *Lela M. Shaw*, 51 ECAB 372 (2000) (where the Board found that a physician's opinion which does not explicitly define impairment in terms of the A.M.A., *Guides*, i.e., whether it be based on findings of pain, loss of range of motion or loss of strength, is insufficient to establish that appellant sustained any permanent impairment due to her accepted employment injury). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3a(2) (January 2010).

<sup>12</sup> *Renee M. Straubinger*, 51 ECAB 667, 669 (2000) (where the Board found in providing an estimate of the percentage loss of use of a member of the body listed in the schedule provisions, a description of a claimant's impairment must be obtained from his or her physician which is in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment and its resulting restrictions and limitations).

impairment. Without the necessary reasoned medical opinion evidence establishing the type and extent of appellant's impairment correlated with the A.M.A., *Guides*, and explaining the causal relationship between these findings and her accepted employment injury, appellant has failed to establish permanent impairment of a scheduled member as a result of her accepted conditions.<sup>13</sup>

On appeal appellant asserts that Dr. Geller's report provided a detailed outline of appellant's permanent disabilities, noted that she had reached maximum medical improvement and complied with OWCP's request for information substantiating her claim for a schedule award. However, Dr. Geller failed to explain how he calculated the impairment rating under the A.M.A., *Guides*. Appellant further asserted that OWCP should have referred appellant to a second opinion physician or a district medical adviser for a schedule award determination. The Board notes that it is appellant's burden to provide a description of impairment from his or her physician which is of sufficient detail so that a claims examiner or others can visualize impairment. As noted above, Dr. Geller's report contained insufficient data to calculate an impairment rating under the A.M.A., *Guides*.<sup>14</sup>

Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant failed to establish that she is entitled to a schedule award.

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<sup>13</sup> *Id.*; see also *supra* note 11.

<sup>14</sup> *Supra* notes 11 and 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 4, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board